

**TITLE 25 INDIANA DEPARTMENT OF
ADMINISTRATION**

LSA Document #05-25(F)

DIGEST

Amends 25 IAC 5-3-2, 25 IAC 5-3-5, 25 IAC 5-3-6, 25 IAC 5-4-1, 25 IAC 5-4-2, and 25 IAC 5-6-2, relating to rules governing the division for minority and women's business enterprise development, by adding and amending provisions relating to applications for certification as an MBE or WBE, including those necessary and appropriate to comply with the directives set forth in Executive Order 05-11, amending provisions relating to control determinations and other factors considered for certifications, procedures governing denial or revocation of certification, review of department certifications, and monitoring of subcontractor participation. Makes other technical and clerical changes. Effective 30 days after filing with the Secretary of State.

25 IAC 5-3-2	25 IAC 5-4-1
25 IAC 5-3-5	25 IAC 5-4-2
25 IAC 5-3-6	25 IAC 5-6-2

SECTION 1. 25 IAC 5-3-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-3-2 Application for certification as an MBE or a WBE

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-14-3-4; IC 5-22

Sec. 2. (a) The enterprise seeking certification as an MBE or a WBE shall submit its application on the form or forms approved by the department, accompanied by all requested documentation.

(b) An enterprise seeking certification as an MBE or a WBE has the burden of demonstrating that it meets the requirements of this rule concerning ownership and control by qualifying members.

(c) The individual signing the application for certification shall be a qualifying member. The qualifying member or members are those whose participation is relied upon to meet the ownership and control requirements, and each shall certify as to his or her status as a qualifying member. The qualifying member signing the application for certification for not-for-profit enterprise must be the highest-ranking official working in the enterprise on a day-to-day basis.

(d) An ~~enterprises~~ **enterprise** seeking MBE or WBE certification shall cooperate fully with the department's requests for information and documentation relevant to the certification process. Failure to cooperate fully may result in denial of MBE or WBE certification.

(e) An enterprise seeking MBE or WBE certification has an affirmative obligation to disclose all material and relevant information affecting ~~that's~~ **that** enterprise's eligibility for certification. Any material misrepresentation or omission may:

- (1) be grounds for denial of certification; or ~~may~~
- (2) result in the issuance of an order to show cause why ~~such~~ **the** certification should not be revoked.

(f) All documents submitted in connection with an application for certification as an MBE or ~~a~~ **a** WBE are subject to the Indiana Access to Public Records Act, IC 5-14-3. The department will maintain as confidential any:

- (1) tax returns; ~~other~~
 - (2) financial information; and
 - (3) trade secret information;
- as authorized under ~~Indiana Code section~~ **IC 5-14-3-4(a)**.

(g) An applicant (an individual who is a qualifying member) can submit a maximum of two (2) applications per year. At any time, only one (1) application can be pending.

(h) If an enterprise withdraws its application ~~prior to~~ **before** completion of the review process, it may reapply at any time, but the reapplication will be:

- (1) treated as a new application; and
- (2) considered in the order in which it is received.

(i) An ~~enterprises~~ **enterprise** certified as an MBE or a WBE as of the date these ~~rule~~ **rules** become effective shall retain its certification until it expires, unless revoked as provided in this article.

(j) If an enterprise has an application for certification as an MBE or a WBE with the department at the date these rules become effective, the department will make its certification determination based on the rules that were in effect at the time the application was received.

(k) The department may accept applications submitted on behalf of the applicant by another certifying body approved by the department, provided that:

- (1) the applicant has requested in writing that the other certifying body submit the file and application materials, including the results of any on-site review, to the department on his, her, or its behalf; and**
- (2) the other certifying body submits to the department those documents in its files relating to the application.**

For applications submitted under this subsection, nothing shall preclude the department from requesting from the applicant such other documentation or undertaking such additional investigations as may be necessary for it to make a determination on whether certification should be granted or denied by the department.

(l) The department may accept certifications from another certifying body approved by the department, provided that:

- (1) the certification issued by the other certifying body requires the applicant to:**
 - (A) submit documentation; and**
 - (B) undergo an investigation no less stringent than the requirements imposed by these rules; and**
- (2) the other certifying body agrees to submit to the department upon request a full and complete copy of the applicant's file resulting in the certification.**

(Indiana Department of Administration; 25 IAC 5-3-2; filed May 30, 2003, 11:00 a.m.: 26 IR 3297; filed Sep 16, 2005, 8:50 a.m.: 29 IR 450)

SECTION 2. 25 IAC 5-3-5 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-3-5 Control determinations

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 5. (a) In determining whether qualifying members control an enterprise, the department will consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as ~~a~~ **an** MBE or a WBE. An independent business is one the viability of which does not depend on its relationship with another enterprise or enterprises.

(1) In determining whether a potential MBE or WBE is an independent business, the department will scrutinize relationships with non-MBE or non-WBE enterprises in such areas as **the following:**

- (A) Personnel.**
- (B) Facilities.**
- (C) Equipment.**
- (D) Financial.**
- (E) Bonding support. and**
- (F) Other resources.**

(2) The department must consider whether present or recent employer/employee relationships between the qualifying member of the potential MBE or WBE and non-MBE or WBE or persons associated with non-MBE or WBEs compromise the independence of the potential MBE or WBE.

- (3) The department must examine the enterprise's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential MBE or WBE enterprise.
- (4) In considering factors related to the independence of a potential MBE or WBE, the department must consider the consistency of relationships between the potential MBE or WBE and non-MBE or WBE with customary industry practice.

(c) An MBE or a WBE must not be subject to any formal or informal restrictions that limit the customary discretion of the qualifying members. There can be no restrictions through corporate charter provisions, bylaw provisions, contracts, or any other formal or informal devices, including, but not limited to:

- (1) cumulative voting rights;
- (2) voting powers attached to different classes of stock;
- (3) employment contracts;
- (4) requirements for concurrence by nonqualifying partners;
- (5) conditions precedent or subsequent;
- (6) executory agreements;
- (7) voting trusts; or
- (8) restrictions on or assignments of voting rights;

that prevent the qualifying members, without the cooperation or vote of any nonqualifying individual, from making any business decision of the enterprise. This subsection does not preclude a spousal cosignature on documents as provided for in this section.

(d) The qualifying members must possess the power to direct or cause the direction of the management and policies of the enterprise and to make day-to-day as well as long term decisions on matters of management, policy, and operations.

- (1) A qualifying member must hold the highest officer position in the enterprise, for example, chief executive officer or president.
- (2) In a corporation, qualifying members must control the board of directors.
- (3) In a partnership, one (1) or more qualifying members must serve as general partners with control over all partnership decisions.

(e) Individuals who are not qualifying members may be involved in an MBE or a WBE as owners, managers, employees, stockholders, officers, and directors. Such individuals must not, however:

- (1) possess or exercise the power to control the enterprise; or
- (2) be disproportionately responsible for its the operation.

(f) The qualifying members of the enterprise may delegate various areas of the management, policymaking, or daily operations to other participants in the enterprise, regardless of whether these participants are qualifying members. Such delegations of authority must be revocable, and the qualifying members must retain the power to hire and fire any person to whom ~~such the~~ authority is delegated. The managerial role of the qualifying members in the enterprise's overall affairs must be such that the department can reasonably conclude that the qualifying members actually exercise control over the enterprise's operations, management, and policy.

(g) The qualifying member(s) must have ~~an overall a general~~ understanding of and ~~managerial and technical competence and experience directly related must demonstrate the ability to effectively manage~~ the type of business. ~~in which the enterprise is engaged and the enterprise's operations. The qualifying members are not required to have experience or expertise in every critical area of the enterprise's operations; or to have greater experience or expertise in a given field than managers or key employees.~~ The qualifying **member or** members must have the ability to:

- (1) intelligently and critically evaluate information presented by other participants in the enterprise's activities; and ~~to~~
- (2) use this information to make independent decisions concerning the enterprise's daily operations, management, and policymaking.

Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the enterprise is insufficient to demonstrate control.

(h) If federal, state, or local law, statute, ordinance, or regulation requires an individual to have a particular license or other credential in order to own or control a certain type of enterprise, then the qualifying members who own and control a potential MBE or WBE of that type must possess the required license or credential. If federal, state, or local law does not require such a person to have such a license or credential to own or control an enterprise, the department may not deny certification solely on the ground that the person lacks the license or credential. However, the department may take into account the absence of the license or credential as a factor in determining whether the qualifying members actually control the enterprise.

(i) The department may consider differences in remuneration between the qualifying members and other participants in the

enterprise in determining whether to certify an enterprise as ~~a~~ **an** MBE or a WBE. ~~Such~~ **The** consideration shall be in the context of the duties of the persons involved, customary industry practice, the enterprise's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the enterprise.

(1) The department may determine that an enterprise is controlled by a qualifying member although that person's remuneration is lower than that of some other participants in the enterprise.

(2) In a case where a nonqualifying individual formerly controlled the enterprise and a qualifying member now controls it, the department may consider a difference between the remuneration of the former **controller** and **the** current controller of the enterprise as a factor in determining who controls the enterprise, particularly when the nonqualifying individual:

(A) remains involved with the enterprise; and

(B) continues to receive greater compensation than the qualifying member.

(j) In order to be deemed as controlling an enterprise, a qualifying member ~~cannot engage~~ **engaged** in outside employment or other business interests **must demonstrate** that: ~~conflict with the management of the enterprise or prevent the individual from devoting~~

(1) sufficient time and attention to the affairs of the enterprise **is invested on a daily basis** to control its activities; and

(2) **none of these outside interests serve to conflict with the management of the enterprise or prevent the individual from devoting adequate time and attention to its control.**

~~For example, absentee ownership of a business and part-time work in a full-time enterprise are not viewed as constituting control. However, an individual will be viewed as controlling a part-time business that operates only on evenings or weekends, or both, if the individual controls it all the time it is operating.~~

(k) The following are requirements concerning control of an enterprise run by a family:

(1) A qualifying member may control an enterprise even though one (1) or more of the individual's immediate family members (who themselves are not qualifying members) participate in the enterprise as a manager, **an** employee, **or an** owner or in another capacity. Except as otherwise provided in this subsection, the department must make a judgment about the control the qualifying member exercises vis-à-vis other persons involved in the business as it does in other situations, without regard to whether or not the other persons are immediate family members.

(2) If the department cannot determine whether a qualifying member, as distinct from the family as a whole, controls the enterprise, then the qualifying member has failed to carry his or her burden of proof concerning control, even though he or she may participate significantly in the enterprise's activities.

(l) Where an enterprise was formerly owned or controlled, or both, by a nonqualifying individual (whether or not an immediate family member), ownership or control, or both, was transferred to a qualifying member, and the nonqualifying individual remains involved with the enterprise in any capacity, the qualifying member now owning the enterprise must demonstrate ~~that:~~ **the following:**

(1) The transfer of ownership or control, or both, to the qualifying member was made for reasons other than obtaining certification as an MBE or **a** WBE.

(2) The qualifying member actually controls the management, policy, and operations of the enterprise, notwithstanding the continuing participation of a nonqualifying individual.

(m) In determining whether an enterprise is controlled by qualifying members, the department may consider whether the enterprise owns equipment necessary to perform its work. However, the department may not determine that an enterprise is not controlled by qualifying members solely because the enterprise leases, rather than owns, such equipment where:

(1) leasing equipment is a customary industry practice; and

(2) the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the enterprise.

(n) The department must grant certification to an enterprise only for specific types of work in which the qualifying members have the ability to control the enterprise. To become certified in an additional type of work, the enterprise must have been certified:

(1) for at least six (6) months in its current type of work; or **certified**

(2) by the department for at least one (1) year;

and demonstrate that its qualifying members are able to control the enterprise with respect to the newly-requested type of work. The department may not, in this situation, require that the enterprise be recertified or submit a new application for certification, but it must verify the qualifying member's control of the enterprise in the additional type of work. However, the department must apply the same standards to additional types of work that were applied originally. Certification in these additional work areas ~~are~~ **is** not guaranteed simply because the enterprise is currently certified. Further, there is a presumption against having more than three (3) industry variations in the same enterprise.

(o) An enterprise operating under a franchise or license agreement may be certified if it meets the standards in this part and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, the department will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be deemed controlled by qualified members, any nonqualifying partners must not have the power, without the specific written concurrence of the qualifying member, to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The qualifying members controlling an enterprise may use an employee leasing company. The use of such a company does not preclude the qualifying members from controlling the enterprise if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the leased employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

(r) There is a presumption against the ability to operate and control more than three (3) enterprises within the context of this article. (*Indiana Department of Administration; 25 IAC 5-3-5; filed May 30, 2003, 11:00 a.m.: 26 IR 3300; filed Sep 16, 2005, 8:50 a.m.: 29 IR 451*)

SECTION 3. 25 IAC 5-3-6 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-3-6 Other factors considered for certification

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6-4; IC 5-22

Sec. 6. (a) The department will consider whether an enterprise performs a commercially useful function in making decisions about whether to certify an enterprise as ~~a~~ an MBE or a WBE. Determination that an enterprise performs a commercially useful function will be made based on the following considerations:

(1) An MBE or a WBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an MBE or a WBE is performing a commercially useful function, one must evaluate **the following:**

(A) The amount of work subcontracted.

(B) Industry practices.

(C) Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing. ~~and~~

(D) The credit claimed for its performance of the work. ~~and~~

(E) Other relevant factors.

(2) An MBE or a WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or a WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.

(3) In the case of construction contracts, if:

(A) an MBE or a WBE does not perform or exercise responsibility for at least the agency's requisite percent of the total cost of its contract with its own workforce; or

(B) the MBE or WBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved;

it is presumed that the enterprise is not performing a commercially useful function.

(b) The department may consider, in making certification decisions, whether an enterprise has exhibited a pattern of conduct indicating prior involvement in attempts to evade or subvert the intent or requirements of the MBE or WBE program.

(c) The department shall evaluate the eligibility of an enterprise on the basis of present circumstances. It will not refuse to certify an enterprise based solely on historical information indicating a lack of ownership or control by qualifying members in the past, if the enterprise currently meets the ownership and control standards of this part.

(d) The department will not require an MBE or a WBE enterprise to be:

(1) prequalified; or

(2) certified under the division of public works;

as a condition for certification. Standards for prequalification and certification are made pursuant to under 105 IAC 11 and IC 4-13.6-4, respectively. However, if the prequalification (certification) is industry/trade-specific, the department will require all enterprises that participate in its contracts and subcontracts related to that area to be prequalified.

(e) The applicant for MBE or WBE certification must possess reasonable prospects for success in competing in the public sector.

(1) The department will deem an enterprise that has been in business for two (2) full years immediately prior to before its date of application as possessing reasonable prospects for success in competing in the public sector (+) if income tax returns for each of the two (2) previous tax years must show operating revenues in the selected types of work for which the applicant is seeking certification.

(2) The department may waive the two (2) years in business requirement if each one (1) of the following conditions is met:

(A) The qualifying member or members have demonstrated management experience.

(B) The qualifying member or members have demonstrated technical experience to carry out the type of business for which certification is sought.

(C) The qualifying member has a record of successful performance on contracts from governmental or nongovernmental sources in its primary area of certification.

(D) The applicant for certification as an MBE or a WBE has demonstrated, or can demonstrate, its ability to timely obtain the personnel, facilities, equipment, and any other requirements needed to perform contracts.

(Indiana Department of Administration; 25 IAC 5-3-6; filed May 30, 2003, 11:00 a.m.; 26 IR 3302; filed Sep 16, 2005, 8:50 a.m.; 29 IR 453)

SECTION 4. 25 IAC 5-4-1 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-4-1 Revocation of an enterprise's certification as an MBE or a WBE

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 1. (a) This section establishes standards for processing a complaint issued to a challenged enterprise concerning the possible revocation of its certification.

(b) Requirements for ineligibility complaints are as follows:

(1) Any person may file with the department a written complaint:

(A) alleging that a currently certified enterprise is ineligible; and

(B) specifying the alleged reasons why the enterprise is ineligible.

The department is not required to accept a general allegation that an enterprise is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the enterprise is ineligible and should not continue to be certified.

(2) The department must review:

(A) its records concerning the enterprise;

(B) any material provided by the enterprise and the complainant; and

(C) other relevant information.

The department may request additional information from the enterprise or conduct any other investigation deemed necessary.

(3) If the department determines, based on this review, that there is reasonable cause to believe that the enterprise is ineligible, the department must provide written notice to the enterprise that it proposes to find the enterprise ineligible, setting forth the reasons for the proposed determination. If the department determines that such reasonable cause does not exist, it must notify the complainant and the enterprise in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) If, based on:

(1) notification by the enterprise of a change in its circumstances; or
(2) other information that comes to the attention of the department; ~~that~~
there is reasonable cause to believe that a currently certified enterprise is ineligible, the department must provide written notice to the enterprise that it proposes to find the enterprise ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(d) Requirements for complaints from other state agencies are as follows:

- (1) If a state agency determines that information in an enterprise's records, or other information available to that agency, provides reasonable cause to believe that a certified enterprise does not meet the eligibility criteria of this subsection, the state agency may request that the department ~~initiate~~ **undertake a proceeding to remove review of** the enterprise's certification.
- (2) The state agency must provide the department all relevant documentation or other information.

(e) The department may issue an order requiring an enterprise to show cause why its certification as an MBE or a WBE should not be revoked as provided in subsection (a), (b), or (c). In such case, the enterprise shall be entitled to a hearing as set forth in ~~25 IAC 5-4-2~~ **section 2 of this rule**.

(f) The department ~~must not~~ **may** base a decision to ~~remove eligibility on a reinterpretation or changed opinion of information available to the department at the time of its~~ **revoke** certification of the enterprise. It may base such a decision only on one (1) or more of the following:

- (1) Changes in the enterprise's circumstances since the certification of the enterprise by the department that render the enterprise unable to meet the eligibility standards of this rule.
- (2) Information or evidence not available to the department at the time the enterprise was certified.
- (3) Information that was concealed or misrepresented by the enterprise in previous certification actions by ~~a~~ **the** department.
- (4) A change in the certification standards or requirements since the enterprise was certified.
- (5) A documented finding that the department's **initial** determination to certify the enterprise was ~~factually~~ **clearly** erroneous.

(g) During the ~~pendancy~~ **pendency** of a proceeding to determine if an enterprise's WBE or MBE should be revoked or suspended, the enterprise shall retain its status until a final order revoking certification is issued by the commission.

(h) When an enterprise's certification as an MBE or a WBE has been revoked and is no longer subject to judicial review, the department will take the following action relative to prime contractors who have relied in good faith upon the certification of the disqualified entity:

- (1) When a prime contractor has made a commitment to use the disqualified enterprise, or there has been a commitment to use the enterprise as a prime contractor, but a subcontract or contract has not been executed before the order to show cause provided for in subsection (e) has been issued, the ineligible enterprise does not count toward the contract goal or overall goal. The prime contractor is to:

- (A) meet the contract goal with an eligible enterprise; or
 - (B) demonstrate that it has made a good faith effort to do so.

- (2) If a prime contractor has executed a subcontract with the enterprise before the department has issued a notice to show cause, the prime contractor may continue to:

- (A) use the enterprise on the contract; and ~~may continue to~~
 - (B) receive credit toward its goal for the enterprise's work.

In this case, or in a case where a prime contract has been awarded to an enterprise that is subsequently decertified, the portion of the decertified enterprise's performance of the contract remaining after the notice of its ineligibility shall not count toward the overall goal but may count toward the contract goal.

(Indiana Department of Administration; 25 IAC 5-4-1; filed May 30, 2003, 11:00 a.m.: 26 IR 3305; filed Sep 16, 2005, 8:50 a.m.: 29 IR 454)

SECTION 5. 25 IAC 5-4-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-4-2 Review of determinations by the department regarding certification as an MBE or a WBE

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 4-21.5-3-5; IC 5-22

Sec. 2. (a) An enterprise:

(1) whose application for certification as an MBE or ~~as~~ a WBE has been denied; or
(2) to which the department has issued an order to show cause why its MBE or WBE certification should not be revoked;
shall be given notice of such action and shall be entitled to petition for review under the Indiana Administrative Orders and Procedures Act, IC 4-21.5, et seq.

(b) The administrative law judge or judges appointed to hear any matter arising under this rule shall have had no prior involvement in the review or preliminary determination of the matter heard.

(c) The ultimate authority under this article is the commission.

(d) When an enterprise is denied certification, it cannot reapply for certification for ~~nine (9)~~ **twelve (12)** months. The time period for reapplication begins to run at the time the enterprise's administrative and judicial remedies are exhausted. (*Indiana Department of Administration; 25 IAC 5-4-2; filed May 30, 2003, 11:00 a.m.: 26 IR 3306; filed Sep 16, 2005, 8:50 a.m.: 29 IR 455*)

SECTION 6. 25 IAC 5-6-2 IS AMENDED TO READ AS FOLLOWS:

25 IAC 5-6-2 Monitoring MBE and WBE participation as subcontractors

Authority: IC 4-13-1-4; IC 4-13-1-7; IC 4-13-2-9; IC 4-13.6-3-1

Affected: IC 4-13-1; IC 4-13.5-1; IC 4-13.6; IC 5-22

Sec. 2. (a) In monitoring the participation of MBEs or WBEs as subcontractors, the department shall conduct preproject meetings with all subcontractors and prime contractors. The department shall determine which projects will require a preproject meeting. Items of discussion at the meeting shall include, but may not be limited to, the following:

- (1) Subcontractors will learn when their services are likely to be needed.
- (2) The department will:
 - (A) explain the state's prompt payment program;
 - ~~(3) The department will~~ (B) provide a review of MBE/WBE program requirements; **and**
 - ~~(4) The department will~~ (C) explain the state's nondiscrimination and antidiscrimination laws.

(b) All contract amendments and change order requests must include **the following:**

- (1)** An explanation of how MBEs and WBEs will be used. ~~and~~
- (2)** The percentage represented above the current contract amount.

(c) Notify appropriate subcontractors when contracts are revised upward through amendments or change orders, or both.

(d) All prime contractors, including MBE and WBE prime contractors, must meet the contract goals through use of subcontractors. MBE and WBE prime contractors will get no credit toward the contract goal for the use of their own workforce. (*Indiana Department of Administration; 25 IAC 5-6-2; filed May 30, 2003, 11:00 a.m.: 26 IR 3307; filed Sep 16, 2005, 8:50 a.m.: 29 IR 455*)

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